COUNSEL

BEFORE THE

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

CONCERNING

H.R. 225, TO AMEND THE IMMIGRATION AND NATIONALITY ACT TO PERMIT CERTAIN ALIENS WHO ARE AT LEAST 55 YEARS OF AGE TO OBTAIN A FOUR-YEAR NONIMMIGRANT VISA

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ROOM 2237 RAYBURN HOUSE OFFICE BUILDING

9:30 A.M.

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss H.R. 225, a bill to amend the Immigration and Nationality Act to permit certain aliens who are at least 55 years of age to obtain a 4-year nonimmigrant visitor visa.

This bill provides for the addition of a new nonimmigrant classification, "T," for certain aliens, age 55 or older, who own a residence in the U.S., but are nationals of Canada or a Visa Waiver Pilot Program (VWPP) country who seek to enter the U.S. temporarily as a visitor for an initial period not to exceed four years. To qualify, the alien must also demonstrate that he or she has sufficient health coverage and an annual gross income that is two times the official poverty line throughout the entire period the alien will be in the United States.

The Immigration and Naturalization Service has reviewed H.R. 225 and has significant concerns with the bill as currently drafted. We have divided our concerns into policy issues and technical or operational issues. We would be willing to work with Members of the Subcommittee to draft a bill that would mitigate our concerns.

Our principal policy issue is that the existing statutory framework already provides for a temporary, or nonimmigrant, classification for an alien who seeks to enter the U.S. as a bona fide visitor for pleasure [See 8 USC 1101(a)(15)(B)]. The current visitor classification (B-2), unlike the VWPP, is not limited to a specific maximum period of authorized stay in the United States and could accommodate those aliens who seek seasonal visits to their residences in the U.S. Generally, aliens qualifying for B-2 classification are admitted for an initial period of six months with the maximum initial time period of one year. Aliens may request extensions of temporary stay as a B-2 visitor or they may depart and seek admission anew as a B-2 visitor. This B-2 classification is often utilized to allow seasonal visitation, the typical reason for travel by nationals of VWPP countries. Currently, visitors from Canada do not need any INS documents to enter and visit the United States.

If the B-2 classification was used as an alternative to the proposed "T" nonimmigrant visa, we would need to develop a new document, or use a current document such as the I-94, to evidence this special visitor status. The B-2 classification, like the classification proposed in H.R. 225, does not permit the alien to work in the United States. The B-2 classification also requires that the alien establish an ability to support him/herself in the United States and not be likely to become a public charge. A consular or immigration officer may consider an alien applicant's ability to cover medical expenses in making this determination. From an enforcement perspective, the INS would prefer to examine the bona fides of an initial application within this existing framework that would also allow reexamination when extensions are sought.

Our second policy concern is that we find the four-year renewable visa premise inconsistent with the concept of "temporary admission". The threshold question is whether the alien is a bona fide visitor or an intending immigrant. It seems inconsistent to deem an alien a temporary nonimmigrant if he or she can be admitted for renewable four-year periods. This legislation raises a question as to whether a "T" nonimmigrant might, through multiple renewals of the visa, effectively become a permanent resident in the U.S. visiting his country of nationality temporarily only to get a new visa.

When examined from this perspective, H.R. 225 would allow for long-term immigration in a nonimmigrant or temporary classification. The bill requires that the alien have "a residence in a foreign country which the alien has no intention of abandoning...." However, the bill requires a return to the alien's country of nationality for a new visa, but then permits a new admission for four years. This may be repeated with no specified limit. This period, or for that matter, any increment that contains no requirement that the alien remain outside the U.S. in between periods of stay, is at odds with the foreign residency requirement in H.R. 225. Moreover, H.R. 225 does not render section 214(b) of the Immigration and Nationality Act (INA) inapplicable to an alien seeking classification as a "T" nonimmigrant. Under section 214(b), every alien is presumed to be an immigrant until the alien establishes to the consular officer that he is entitled to a nonimmigrant, or temporary, classification. This is commonly referred to as "nonimmigrant intent." Accordingly, few aliens would be able to meet the burden of proof and establish eligibility as a "T" nonimmigrant.

With the above stated, there are a number of operational and technical concerns the Service has with H.R. 225. Section 1(b) of H.R. 225 requires that an application for admission be filed in the alien's home country. This could be changed to read "visa applications are filed...". An application for admission is made only at a POE - as you are aware, a visa application is made before a consular office outside the U.S. The validity period of a visa is determined by the Secretary of State and differs from the period of admission and authorized stay granted by the Attorney General. We would be happy to assist the Subcommittee or other Members in drawing a clear distinction between the two validity periods. Also, the bill requires the alien to file the application in the "country of the nonimmigrant's citizenship." If the intent is to require the alien to apply for a visa every four years, this should be changed to "country of the alien's nationality" as in section 222(g) of the Act. The term "residence" is used twice in H.R. 225 but has different meanings within

the context in which it is used. There is an existing definition of the term "residence" in the Act which may be pertinent for one of the two of the uses of the term in H.R. 225. [See INA 101(a)(33)]

Secondly, the language implies that all aliens, including citizens of Canada who are currently exempt, by regulation, from the nonimmigrant visa requirement unless otherwise specified, will be required to obtain a visa. Imposition of a nonimmigrant visa requirement may pose important foreign policy issues between the U.S. and Canada. If, however, a Canadian citizen seeking "T" nonimmigrant classification is exempt the visa requirement, the determination of admissibility and classification must be made at the POE. Such a determination will pose an additional and significant burden on POE's, as the determination will involve review of considerable documentation, expertise in reading medical insurance policies, financial documents, etc. This rises to the level of a complex adjudication and is not traditional POE activity. Moreover, it could require additional resources not currently available for this purpose.

As stated above, the Service has concerns regarding H.R. 225 and could not support the bill as drafted. While we see the provisions of the bill as inconsistent with the definition of temporary visitation, and feel that the existing B-2 classification already can accommodate those aliens who are bona fide nonimmigrant visitors wishing to spend time in their residences in the United States, we would be willing to work with Members of the Subcommittee to examine alternative methods of developing this category, such as an immigrant category for this class of aliens.

I thank you for this opportunity to explain the Service's views on this proposed bill. In addition, the Administration is continuing to review H.R. 225 and expects to provide additional separate comments.